Previous references.

~~1910~~ 1912

(Courts)

File No. 153-12

Serial Nos. 1-2

Later references.

Pris 34-12-(4)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 – 2

Part B. for Feb. 13.

SUBJECT.

Memorial of Malloda alias Thimma & Thimmi convicted of murder in Hassan Sessions Case No 10 of 1912–13

1. From the Registrar Chief Court. No 2038/1389 16.12.12
   Forwards & the memorial noted above with the entire records of the case.

2- To the Registrar Chief Court-No
   Forwards copy of the order of His Highness the Maharaja commuting the sentence of death passed on Thimma to one of transportation for life & rejecting the memorial in other respects—

G. R. S. 58

Hassan

3-12

G.R.S. 11] 1912-13.

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

Cts File No. 133. 12.

FILE HEADING.

Memorials of Mallodu alias Thimma and Thimmi. Convicted of murder in Hassan Sessions Case No 1 of 1912-13.

From

The Registrar, Chief Court.

No. 2033/138 Dated 16. 12. 12. Received 21. 12. 12.

Diary No. J 16/11. Enclos. one & Records. Spare Copies. Serial No. 1.

BRIEF ABSTRACT OF LETTER.

Forwards a memorial addressed to H.H. the Maharaja by Thimma and Thimmi, convicted and sentenced, the first to death and the second to transportation for life, praying for a merciful release from jail.

NOTES AND ORDERS.

Subs for orders.

Hes 122 CW(11) 23.12.12. 26/12/12

2. The judgment of the learned Sessions Judge gives the facts of the case clearly. He and one of the assessors

NOTES—First Sheet.

GPB—30,000—12-8-11

G. R. S. 12]

General and Revenue Secretariat. | C/5 File No. 153 of 1912

Serial No.

found the accused guilty. The finding has been accepted by the Chief Court though they have Commuted the sentence of death passed by the Sessions Judge on the 2nd accused also, to one of transportation for life.

3. As both the Courts have held the guilt of the accused proved Satisfactorily it is perhaps unnecessary to discuss the Evidence in the Case again. Refer may however be made to one or two outstanding features in the Case which bear on this question directly.

4. It will be noticed that the investigation of the Case was well nigh advanced before the P.S. arrived on the Scene ~~after~~. The first time they came only the inquest on the body was held but as identity was not Established they left with instructions to the Patel to be on the watch. Before they came a second time the Patel had gathered enough information to Satisfy him that the deceased was Kenjma Hamma

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat. | ch File No. 153 of 1912

Serial No.

and that his murder was Carried out by the 1st accused at the instigation of the second ✱ The Story about the abt- ✱ the police tutoring the accused to confess before the Magte loses therefor much of its force

5th Another point worth noticing is that two children of the deceased Hanuma and Hanumi ✱ who are also Children of the 2nd accused bear out the prosecution Story that when they questioned her about their father their mother was answering that she had gone to Giddamma's temple — a Story which need not have been invented if she had not any good reasons for doing so.

Prosecution witness 223

6 - The motive for the murder seems also very clear. The Story narated by the 2nd accused in her Confession about the brutal way in which her husband was treating her and her Son has all the appearance of truth and this must have driven her to the Conclusion

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat. | C/o File No. 153 of 1912

Serial No.

that her troubles could be ended only by putting an end to her husband's life. The deceased seems to have been a man of violent temper and habits.

7' There is a suggestion in the Evidence that the 1st accused was keeping the 2nd but this story apparently did not receive credence in either of the Courts and need not therefore be considered here.

8' The Chief Court have commuted ~~reduced~~ the sentence in the case of the 2nd accused on the ground that the deceased had probably made her life a burden to her but ~~it may perhaps~~ as regards the 1st accused they have confirmed the sentence of death. It may perhaps be submitted for consideration whether when the Chief instigator of the crime has been held not to merit the penalty of death, the 1st accused who carried out the instructions of the

NOTE—Contn. sheet.

GPB—65,000—17-5-12.

G. R. S. 12]

General and Revenue Secretariat. | ~~Ch~~ File No. 153 of 1912

Serial No.

2nd Should not also be Considered Entitled to Some mercy.

25/1/2

Council Case

Secy

1st Councilor

23
27/1/2

9- The Chief Court and the Sess. Judge having Concurrently found the Memorialist guilty, there is no necessity to say anything on the merits of the evidence. It has only to be remarked that if the retracted ~~evidence~~ Confessions of the accused are left out, there is almost no evidence of a legally admissible nature to support the decision that they are guilty. The approver gave no evi-

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

Serial No.

dence before the Sess. Judge against the appellants. ~~In~~ The woman is said to have made admissions not only before the Magistrate but also before others before the police took up the case regularly. Against the Prisoner whose death sentence is confirmed there is only one confession ~~made~~ stt made by him. The case is therefore weaker against the 1st accused than against the 2nd.

We do not consider it safe that the extreme penalty should be inflicted in such a case. The sentence on him may also be ~~commuted~~ Commuted to one of transportation for life. In other respects the memt may be rejected

Hm

6/12/12

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

[G. R. S. 12]

General and Revenue Secretariat.

Cts File No. 153 of 1912.

Serial No.	
703/4.1.13	Devan. 23/3/1. 8/1/13.
	Ordered to be Submitted to the 2nd Councillor on 16-1-13.
	11) I see no reason to differ from the 1st Councillor & recommend that under the circumstances of the case, it would meet the ends of justice if the sentence of death passed by the Honble Chief Ct. in the case of the 1st appellant were commuted to one of transportation for life as was done in the case of the 2nd appellant - Dhuniram the wife of the deceased. Ully 18/1/13
967/20.1.13	Devan 23/18/1/13

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

Submitted to His Highness.

12 The accompanying papers relate to a memorial addressed to His Highness by Thimma alias Malloda, and Thimmi, accused in Hassan Sessions case No. I of 1912-13 and sentenced to death and transportation for life, respectively, for being concerned in the murder of one Kengana Hanuma. The memorialists pray for release on the ground that they did not participate in the crime.

13 2. The facts of the case are given in detail in the judgment of the Sessions Judge, Mysore Division, and the Appellate judgment of the Chief Court. Briefly stated, they are as follows:-

pp 1-7 of the printed records.

Flag A

14 3. One Kengana Hanuma, a Wâddar of Kellengeri, Arsikere Taluk, was ill-treating his wife Thimmi (second accused) and his son Thimma (approver) aged 17. He was quarrelling also with Malloda (first accused) to whom Hanumi, his (deceased's) daughter was to have been married

15 4. Three days before the murder, Malloda, Thimmi and Thimma conspired together to get rid of Kengana Hanuma.

16 5. In pursuance of their preconceived plan, Thimma

enticed his father to a toddy grove on the pretext of finding toddy for him there. Malloda followed from behind and on reaching the said grove struck Hanuma on the leg with the stem of a date tree. Hanuma fell down. Malloda then got on the chest of the fallen man and throttled him to death, Thimma holding his father's hands. They then tied a rope to the corpse and dragged it to an adjoining garden, and fastening a stone, dropped it into a well. On their way back they concealed the deceased's clothes under a stone in another well.

(7) 6. Six days later, i.e., on the 23rd May 1912, the corpse was seen by some of the residents of the Kellengeri village, and the Patel made a report to the Police. At the inquest held on the 24th idem, the body could not be identified. The Sub-Assistant Surgeon, who held the post mortem examination, was unable to form a definite opinion as to the cause of death owing to the advanced stage of decomposition in which the body was found.

(8) 7. On the 25th May, Thimma and his mother confessed their guilt before some of the villagers. The former was thereupon handed over to the Police the same day and the other two accused persons were arrested on the following day. On the 31st idem, accused Malloda and Thimma (approver) pointed out the place where they had concealed

10

the cloths. The First Class Magistrate of Tumkur recorded the confessions of the accused on the 4th June 1912. On 12th June 1912 they were charged before the First Class Magistrate, Chennarayapatna Sub Division, under Section 302 of the Indian Penal Code. In this Court, the first accused retracted his confession but the second accused adhered to hers. Thimma was given a free pardon and made an approver. The other two, Malloda and Thimmi, were committed to the Hassan Sessions on the 9th July 1912.

19 8. Thimma withdrew his previous statement as approver and Thimmi withdrew her confession. The Sessions Judge, concurring with one assessor and differing from the other two, found the first accused guilty of murder and the second accused of abetment, and sentenced both of them to death.

20 9. The Chief Court confirmed the finding of the Sessions Court, regarding the guilt of the memorialists but reduced the sentence passed on Thimmi to transportation for life. In regard to the first accused, they have stated in their order that "they can find no extenuating circumstances for his participation in the murder" and that "it is not alleged that the deceased ever did him any real harm or that the accused had any

11

real excuse for his action".

21) 10. The memorialists i.. .heir petition now submitted deny their guilt and pray that they may be released from the Jail.

pp 5-6 of the office note.

22) 11. The First Councillor is of opinion that, if the retracted confessions of the accused are left out, there is no evidence worth mentioning of a legally admissible nature to support the decision that they are guilty. He observes that the approver gave no evidence before the Sessions Judge against the appellants, that against the prisoner whose death sentence is confirmed, there is only one confessional statement made by him, and that therefore the case against the first accused is weaker than against the second. He does not consider it safe that the extreme penalty should be inflicted in such a case and recommends that the sentence on him also ~~xxxx~~ be commuted to transportation for life. In other respects, he is for rejecting the memorial.

a p. 7

23) 12. The Second Councillor is of the same opinion as the First Councillor and recommends that, under the circumstances of the case, it would meet the ends of justice if the sentence of death passed by the Chief Court in the case of the first appellant is commuted to one of transportation for life as was done in the

13

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.

Memorial of Makloda alias Thimma and Thimmi accused in Hassan Sessions case No. 1 of 1912-13, praying for release from the jail.

567

Order.

25 I agree with the Dewan

KRW

28/1/13

B

25/2

Sanctd

RC

29.1.13

[Draft has been put up for Dewan's Signature]

SD

29/1/13

D III

23

30/1

24/2/13

26/2/13

26 Put up draft & memo to circulate to Cons SPL 30/1/13

Given 26/2

1611

[C. R. S. 12]

General and Revenue Secretariat

65 File No. 153 of 1912-13

Serial No.	
	27 Subd with the usual draft.
	KQ.-129
	31/1 SW (D.Y. Sec.) 1.2.13
	28 Typed copies may be sent for the Signature of the Dewan.
	Dewan 1/2
	SOL 1.2.13
	29 Subd with a typed copy of the endorsement for Dewan's Signature.
1175 1.2.13	SW 1.2.13
	30 Fair copy has been signed by the Dewan.
	dez 1.2.13
	WJ 1/2/13
5 8/2/13	2. To the Regr. Chief Court, no. J.2289 dt. 3.2.13 forwards a copy of the order passed by the Divn. Bench that the sentence of death passed on Thumma be commuted to one of transportation for life & that the memorial of Thumma be rejected.
	3 Subd to the 1st & 2nd Councillors for perusal of H.H.'s order.
	SW 8/2/13

NOTE—Contn. sheet.

GPB—65,000—17-6-12

2033 Executive & Records. 138

III 21/12 Pr Ch No

DIARY No. 16.11

12-13

Court

Bangalore, 153-12

SERIAL No. 1.

Dated 16 December 1912.

19 11

From

THE REGISTRAR OF THE
CHIEF COURT OF MYSORE.

To

THE SECRETARY TO GOVERNMENT,
GENERAL AND REVENUE DEPARTMENTS.

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja by Thimma & Thimmi accused in Hassan Sessions Case No. — / of 1912-13 on the file of the Sessions Judge of Mysore Division and appellant in Criminal Appeal No. 16 of 1912-13 on the file of this Court. Ref's Case No 1

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient servant,

Ag. Registrar.

GPB—1,000—16-8-12

83

359 Endowments (2
C 153-12-1

[illegible]

[illegible] 6684 [illegible]
[illegible] 6685 [illegible]

[illegible]

Left thumb mark of Thima

Do of Thimmi

Stated and marked before me

C. Mcomilake

Chief gailor

B. Bgail

14.12.12

Welcome 6
Cb 153-12-1

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday, the 11th day of December 1912.

PRESENT.

Mr. Justice K.S. CHANDRASEKHARA AIYAR, Judge

and

Mr. Justice E, H. W A L L A C E, Judge.

Petition of Criminal Appeal No. 16 Referred case No. 1 of 1912-13 against the conviction and sentences by the Sessions Judge, Mysore ~~Judge~~ Division, under Section 302, Indian Penal Code, against the first accused, and Sections 302 and 109, I.P.C. against the second accused, in Hassan Sessions Case No. 1 of 1912-13.

APPELLANTS.

1. Thimma alias Malloda.
2. Thimmi.

(Accused)

JUDGMENT.

1. The two appellants in this case have been convicted of murder under Section 302, I.P.C. and sentenced to death.

2. The facts of the case very briefly are : - On 23rd May the body of a man was found in the well of P.W. 8. It was so decomposed that identification was difficult but it was subsequently identified as that of a Ooddar Ken gana Hanuma, the husband

husband of second appellant. On 25th May, P.W. 1 the son of deceased and second appellant is said to have confessed to P.W. 23, one of the villagers that he and first appellant had murdered the deceased at the instigation of second appellant. This statement he repeated to other villagers, prosecution witnesses 18 to 22 and 24, and he was then handed over to the police. On 26th appellants were also arrested. On the 30th P.W. 1 and first appellant stated that they had hidden the deceased's cloths in an adjoining well and these were obtained thereon that information in the presence of the Amildar and others/prosecution witnesses 5,7,9, & 10, 11,14 etc:. On 2nd June both appellants and P.W. 1 made confessions to the first Class Magistrate of Tumkur. P.W.1 was at the trial taken as an approver. Before the Committing Magistrate he retracted his previous story, and second appellant repeated her confession. First appellant denied his. Before the Sessions Court, P.W. No. 1 withdrew her confession. First appellant also denied that he took any part in the murder.

3. The important points to be considered on appeal are (1) the identity of the corpse (2) the appellant's confessions (3) the evidence of the approver who was an accomplice and (4)

what

what corroboration there is of the appellants' confessions, and the approver's evidence, and what value is to be attached to them.

4. As to the identity of the corpse we entertain no doubt and need not here repeat the reasons given by the Sessions Judge for his conclusion on that point. On the question of the value of appellants' confessions, we shall deal with each separately. First appellant admitted having made the confession Exhibit P_{10} to the Tumkur Magistrate, but said that he made it because he was tutored by the police and amildar. In his lengthy statement before the Sessions Court we can find nothing raising even a reasonable doubt that any such tutoring occurred, and he has adduced no evidence of it. His statement to the Tumkur Magistrate was that " nobody had induced me to confess and I do it with my own free mind" (Exhibit P_{10}) Before the committing Magistrate he admitted having made that statement, before the Sessions Court he retracted even that admission and denied that he made the statement Exhibit P_{10} at all. He has thus abandoned his original defence that he made it under tuition by the police, and it is evident that the plea is a pure invention. We can see no reason for believing that the confession Exhibit P_{10} was not made by him deliberately and voluntarily

and

and we accept it as such.

5. As to the confession of second appellant (Exhibit P12) she repeated that in great detail before the committing Magistrate, (Exhibit P11, even when she had heard first appellant in that court retract his under the plea of police tuition. Clearly her statement to the Sessions Court that she made it under police tuition is also disingenuous and an obvious invention also. We can see no reason for not accepting it as made entirely of her own free will.

6. Now as to the approver's statements, we have first of all to remark that the lower court has improperly admitted evidence of or at least improperly used the statements made by him to the villagers. The Sessions Judge rightly refused to allow the statements of the approver to the Tumkur Magistrate to be put in evidence, on the ground that it was not 'corroboration' of his statement in court, as in fact it was inconsistent with it, and therefore was not relevant under Section 155, Indian Evidence Act. But it is clear that his statements to the villagers are on the same footing. Yet the Sessions Judge allowed these under Section 157 as corroboration of his evidence before the committing Magistrate and under Section 155 to contradict his evi-

dence

evidence in the Sessions Court. Since the witness in the Sessions Court, while admitting that he made the statements to the villagers and the Tumkur Magistrate, swore that these were not true and were made under inducement and police tuition, and thus retracted them, they were all inadmissible under Section 157, I ndian Evidence Act to corroborate him and could only be used under Section 155, Indian Evidence Act, to contradict him, i.e. on behalf of the appellants to show that the witness was unworthy of credit. But the Sessions Judge has improperly used the statements of prosecution witness No. 1 to the villagers to strengthen and render probable the truth of his statement before the committing Magistrate, i.e., has used them not on behalf of the appellants, but against them, to show not that the witness was unworthy of credit, but that certain statements made by him but subsequently retracted were worthy of credit. We cannot accept the Sessions Judge's view that Section 157 allows him to put in as substantive evidence these statements, because in <u>another court</u> the witness made <u>similar</u> statements.

7. We could only use these statements to the villagers as showing that prosecution witness No. 1's statement in the Sessions Court was unworthy of credit and their value as substantive

substantive evidence against the appellants is nil. It is safer to reject them altogether. We are left with the deposition of prosecution witness No. 1 before the committing Magistrate, which is evidence under Section 288, Criminal Procedure Code, and his statement before the Sessions Court retracting that. The deposition before the lower court has to be used with extreme caution because (1) it is the statement of an accomplice (2) it has been retracted.

8. That deposition is filed as Exhibit P_1. It contains a detailed statement of how he and first appellant instigated by second appellant, decoyed deceased to the well and murdered him and threw his body into the well. In the Sessions Court he said that he made this statement because "they wanted me to say so", 'they' being the police inspector and the caste panchayatdars. This explanation for making a long and detailed statement implicating himself and others in a murder is obviously inadequate. Further the facts stated in Exhibit P_1 are in several points corroborated by extraneous evidence, e.g., as to the manner in which the deceased's body was tied when it was thrown into the well, as to the deceased's cloths being deposited in an adjoining well, as to his (P.W. No. 1) being questioned by the

villagers

villagers, and his mother and he telling them that his father had gone on a pilgrimage to Yelleyur, as to his father's quarrel with first appellant, on the ground that first appellant was keeping second appellant.

9. On due consideration we think that Exhibit P_1 is in the main a true statement of facts, though a statement made by an accomplice under promise of pardon. How far can it be used as substantive evidence against the appellants?

10. The confession by first appellant (Exhibit P_{10}) though short, is to the same effect as the approver's statement Exhibit P_1. They were made without collaboration. Both agree as to the manner in which the deceased was killed, and thrown into the well, and as to the part played by each of them. We have already given reasons for accepting this confession as true. Exhibit P_1 corroborates it throughout and there is no attempt by one or the other conspirator to minimise the part played by himself and exaggerate the part played by the other. Prosecution witness No. 1 gives to first appellant the part which first appellant himself admits he played. We have no doubt that Exhibits P_1 and P_{10} contain a substantially true account of the part first appellant took in the murder of the deceased, and

they

they are corroborated by the evidence regarding the discovery of the deceased's cloths by prosecution witness No. 1 and first appellant, as already mentioned. This proves that he, along with prosecution witness No. 1, seized him, held him down and killed him by throttling him. First appellant has been rightly convicted of murder under Section 302, Indian Penal Code and we confirm that conviction.

11. The case against second appellant is also strong. Her own conduct, immediately after the murder, as spoken to by prosecution witnesses Nos. 15, 17, 20 and 24 is extremely suspicious and eloquest of guilty knowledge. Her two confessions (Exhibits P_{11} and P_{12}) we have accepted and Exhibit P_1 again corroborates both and neither minimises nor exaggerates her part. We have no doubt that the part played by her is correctly and truely detailed in these documents. They prove that she instigated her son and first appellant to kill her husband and that they did as a matter of fact murder him at her instigation. We confirm her conviction also under Sections 302 and 109, Indian Penal Code,

12. We can find no extenuating circumstances for first

appellant's

appellant's participation in the murder. It is not alleged that deceased ever did him any real harm or that he had any real excuse for his action. We confirm the sentence of death passed on him. As to the second appellant, in view of the probability that her life was made a burden to her by the deceased, we reduce the sentence to one of transportation for life.

(Sd)/- K.S. Chandrasekhara Aiyar,

J U D G E.

(Sd)/- E. H. Wallace.

J u d g e.

"True" C o p y "

Ag: Registrar.

N.G.

181.

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2 Pfs. alw 11/2/13

No. J 2228/cls 153-12-2 Encl 1 and Enclosures

MYSORE GOVT. GEN. & REV. SECRETARIAT.

Dated Bangalore. ~~November~~ 1913

~~1st~~ 3rd February 1913

From

The Secretary to the Government of H. H. the Maharaja of Mysore.

To

The Registrar of the Chief Court of Mysore.

SIR,

I am directed to forward herewith for information of the Judges of the Chief Court and for communication to the prisoners Thimma alias Mallodaya and Thimmi, accused in Kasaba Session Case No. of 1912-13 and Appellants in Criminal appeal No. 16 of 1912-13 (on the file of the Chief Court) undergoing sentence of death and Banishment for life respectively in the Bangalore Central Jail, copy of order passed by H. H. the Maharaja of Mysore, on the prisoner's memorial praying for mercy

2. The entire records received with your letter No. 2033 dated 16th Dec 1912 ~~dated~~ 190 ~~are~~ herewith returned.

I have the honor to be,

SIR,

Your most obedient servant,

11/2/13

for Secretary.

11/2/13

Petitions
Cs 153-12-72

In the Matter of a Memorial

of Thimma alias Malloda and Thimmi, accused in Kassaba Seivans Case No. 1 of 1912-13 and sentenced to death and transportation for life, respectively, praying for release

His Highness the Maharaja

has been pleased to direct that the sentence of death passed on Thimma, alias Malloda the first accused, be commuted to one of transportation for life, and that the memorial of Thimmi be rejected

Dewan of Mysore

1.2.13.

Draft
Kg-129
31/1